

**FINANCE AND ADMINISTRATION CABINET
DEPARTMENT FOR FACILITIES & SUPPORT SERVICES
FRANKFORT, KENTUCKY**

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ARCHITECT'S/ENGINEER'S CONTRACT

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SECTION 1

This CONTRACT made and entered into this _____ day of _____, by and between the Commonwealth of Kentucky hereinafter called the "OWNER" and «VendorName», «VendorAddress», «VendorCityStZip», hereinafter called the "A/E" (Architect/Engineer). It shall be understood that the words "Architect" and "Engineer" as used in this contract are interchangeable. Whichever word is used above in connection with the firm name of the Architect or Engineer shall be accepted as the correct appellation throughout the contract regardless of which word is used hereafter. WITNESSETH THAT, the Owner is considering the development and construction of a project defined as follows:

«RFP»

«ProjectDescription1»

«ProjectDescription2»

«ProjectDescription3»

«ProjectDescription4»

«ProjectDescription5»

Hereinafter called the "Project", for use by

«Requesting Agency»

Hereinafter called the "Agency", and WHEREAS, the Owner desires the services of an A/E to render architectural or engineering services, or both, incident to such development and construction of the Project, all as more fully described hereinafter.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Owner and the A/E agree:

ARTICLE I
REPRESENTATIONS AND WARRANTIES

By executing this Contract, the A/E makes the following express representations and warranties to the Owner.

(A) The A/E is professionally qualified to act as the A/E for the Project and is licensed to practice architecture or engineering, or both, by all public entities having jurisdiction over the A/E and the Project:

(B) The A/E shall maintain all necessary licenses, permits or other authorizations necessary to act as A/E for the Project until the A/E duties hereunder have been fully satisfied;

(C) The A/E will become generally familiar with the Project site and the local conditions under which the Project shall be designed, constructed, and operated;

(D) The A/E shall exercise that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in preparing all documents required by this Contract including, but not limited to, all contract plans and specifications, and shall exercise usual and customary professional care to conform and comply with all applicable law, codes and regulations in effect at the time of preparation;

(E) The A/E assumes responsibility to the Owner for the negligent acts, errors, and omissions of its consultants or subconsultants for professional services within the scope of work between A/E and Owner for the Project.

ARTICLE II
THE A/E'S SERVICES

The A/E's services shall be divided into four phases. Each of the last three phases of the A/E's services shall be performed only upon written authorization of the Owner. Nothing in this contract shall be construed as placing any obligation on the Owner to authorize the A/E to proceed with any phase of his services beyond the first phase, nor shall the Owner be obligated to pay any fees to the A/E incurred beyond the fees applying to the first phase of his services, without the above mentioned written authorization. However, the Owner shall not, without the consent of the A/E, employ or retain any other A/E to perform any of the services covered by this contract unless this contract shall have been terminated as set forth in Section III of this document. The four phases of the A/E's services shall be as follows:

PHASE A - SCHEMATIC DESIGN AND ESTIMATE:

Under Phase A, the Owner and the Agency shall furnish to the A/E, written programming data defining area usage and square footage, total project scope, allowable construction cost, together with information on other allowable Project costs. The A/E and his consultants shall confer with the Owner and the Agency to confirm their understanding of the Owner or Agency's purposes, concepts, desires and requirements (Program) and to determine any Owner or Agency preferences with respect to systems and other elements of the Project. The A/E shall submit a written report detailing the A/E's understanding of the Owner and Agency's Program within N/A days of N/A. This report shall include a review of the written Program data and the allowable Project costs and the A/E's evaluation of whether the Program furnished is adequate in its description and whether the allowable construction cost is sufficient for the Program. In the event the Agency does not have a Program or the Program furnished is inadequate, or exceeds the scope permitted by the allowable construction cost, the A/E shall, at the request of the Owner, provide professional assistance in developing a Program or reprogramming the Project or otherwise assisting in the reconciliation of Program requirements with the allowable construction cost. Within «PhaseADays», the A/E shall prepare adequate drawings and outline specifications to define the style and type of structure, the type of mechanical systems, controls, lighting, electrical systems and structural systems, for the Project which can be completed within the allowable construction cost. Together with the submission of such drawings and specifications, the A/E shall also submit to the Owner in writing a realistic programming estimate of the construction cost for the Project based upon the drawings and specifications submitted and any other decisions reached to date, which estimate shall be within the authorized Project scope. A maximum of six (6) sets of said drawings and specifications shall be submitted. If at anytime during the A/E's work under Phase A, after Program review and adjustment, it should appear evident that the Project scope or allowable construction cost will be exceeded, the A/E shall notify the Owner in writing accordingly and shall recommend remedial action to reduce the cost to the authorized scope. At the conclusion of Phase A, and a determination by the owner that the Project will proceed, the Owner shall negotiate with the A/E, a reasonable lump sum fee for those services to be provided as agreed upon between the Owner and A/E. Upon written authorization by the Owner, the A/E shall commence Phase B of his services.

For projects Seeking LEED Certification the A/E shall perform the following during Phase A:

- The Architect/Engineer shall register the project as a LEED project with the USGBC.
- The Architect/Engineer shall determine the appropriate LEED checklist relative to the project program, shall identify, with the Owner's assistance, the LEED credits appropriate for the project, and conduct design activities accordingly to achieve the desired credits.

- The Architect/Engineer shall participate in commissioning authority schematic design review process if enhanced commissioning is used. Develop a Basis of Design (BOD) based on the Owner's Project Requirements (OPR).
- The Architect/Engineer shall provide a preliminary energy model as required to document compliance with the required number of points for Energy and Atmosphere Credit 1.

PHASE B - DESIGN DEVELOPMENT AND COST ESTIMATE:

Under Phase B, the A/E shall assist the Owner in obtaining a complete site survey showing boundaries, easements, restrictions, topography, streets, utilities, and existing structures, together with reports on subsurface investigations such as soundings, core drilling or soil bearing tests as may be required in order for the A/E and it's consultants to properly design the structure and related facilities.

Within **«PhaseBDays»** days of the written authorization by the Owner for the A/E to proceed with Phase B, the A/E and it's consultants shall prepare design development drawings and specifications showing and

describing, generally, the site plan, utilities, floor plans, elevations, sections, structural systems, materials and finishes. The design development drawings and specifications for the mechanical, electrical and structural portions of the Project shall be prepared by consulting engineers, each licensed in their area of the engineering work. Each drawing shall be imprinted with the seal of the A/E or consultants directly responsible for its preparation. All such drawings and specifications shall be for a Project which can be completed within the limitations prescribed in Phase A. Together with the submission of such drawings and specifications, the A/E shall also submit to the Owner a realistic cost estimate based upon the drawings and specifications submitted, any other decisions reached to date, and the most recent and accurate information regarding local material/equipment prices, wage rates (determined by Kentucky Revised Statutes 337.510 and 337.520) and the actual cost of recent similar projects, making appropriate allowance for changes in cost which may reasonably be expected to occur by the time the Project will be bid and constructed. This Phase B Cost Estimate shall be within the allowable construction cost. If at anytime during the A/E's work under Phase B the A/E shall become aware that the Project cost will exceed the limitations prescribed in Phase A, the A/E shall notify the Owner in writing and shall recommend remedial action which shall reduce the cost to the allowable construction cost. Upon completion of Phase B services, the A/E shall submit six (6) printed copies of the design development drawings and specifications to the Owner for approval, which approval shall be defined as approval for design intent and shall not operate to relieve the A/E from providing adequate design under the contract. Upon such approval of intent, the Owner shall sign and return to the A/E, one copy of each of these documents, together with written approval of Phase B of the A/E's services. Upon written authorization by the Owner, the A/E shall commence Phase C of his services.

For projects Seeking LEED Certification the A/E shall perform the following during Phase B:

- The Architect/Engineer shall participate in commissioning authority design development review process if enhanced commissioning is used.
- The Architect/Engineer shall finalize LEED points being pursued on the project.
- The Architect/Engineer shall provide a preliminary energy model as required to document compliance with the required number of points for Energy and Atmosphere Credit 1.

PHASE C - CONSTRUCTION CONTRACT DOCUMENTS AND FINAL ESTIMATE:

Within «PhaseCDays» days of the written authorization by the Owner to proceed with Phase C, the A/E and it's consultants shall prepare complete and coordinated working drawings and specifications showing and describing with specificity materials, based upon the approved Phase B drawings and specifications and prepared in accordance with normal accepted standards of architectural or engineering practice. In the event the Owner desires to divide the Project into two or more construction projects, the A/E shall prepare the drawings and specifications to clearly show and describe the work covered in each. The A/E and its consultants shall prepare the technical specifications and shall, with the assistance of the Owner, prepare lists of principal materials, subcontractors, Special Conditions, Forms of Proposal, and a list of Alternates if any have been authorized. (The Owner shall prepare the General Conditions, the Form of Contract and Form of Bond). The title block of the drawings shall be as provided by the Owner unless prior approval is secured for a specific variation. The drawings shall be in pencil or ink on 2 mil. or heavier mylar, size 24" by 36" or 30" by 42", and shall have proper line quality for reproduction of clear, distinct prints. The specifications shall be typed or reproduced in black ink on master copies such as plain white 16 lb. or 20 lb. bond paper for standard 8 ½" x 11" reproductions and be of appropriate quality to allow the printing of specification books. The A/E shall submit to the Owner six (6) printed sets of the working drawings and specifications, including one (1) electronic copy as agreed upon between the A/E and Department, a rendering suitable for reproduction, and a color negative and six (6) 8" x 10" glossy prints of the rendering. Together with the submission of such drawings, specifications, etc., the A/E shall submit to the Owner in writing a final anticipated cost estimate based upon the drawings and specifications submitted and the most recent and accurate cost information, which estimate shall be within the allowable construction cost and shall hereinafter be referred to as the Final Estimate. The Final Estimate shall not be increased or decreased by the A/E unless authorized by the Owner. If at any time during the A/E's work under Phase C the A/E shall become aware that the Project scope or Final Estimate may be exceeded, the A/E shall notify the Owner in writing and shall recommend, in writing, remedial action which shall reduce the cost to the authorized scope. The Owner shall consider the recommendations of the drawings and specifications submitted by the A/E, note corrections to and approval of the

recommendations, and return one complete set so marked to the A/E. The A/E shall then make any necessary corrections on the original mylar drawings and master copies of the drawings and specifications and shall obtain all necessary approvals required by applicable law, codes and regulations. All required approvals, and corrected original drawings and corrected master copies of the specifications shall then be delivered to the Owner within thirty (30) days of owners approval. None of these documents shall contain any item or facility not previously approved for design intent by the Owner. The Owner shall then make all printed copies of the drawings and specifications for bidding and construction purposes. The A/E and it's consultants shall assist the Owner in obtaining bids, receiving, tabulating and evaluating the bids received and in the award of any contract or contracts for construction of the Project or any part thereof. Following their evaluation of the bids received, the A/E and it's consultants shall prepare and submit to the Owner written recommendations concerning contract award and approval of proposed construction materials/equipment and subcontractors. In the event that the Owner elects not to award a construction contract because the low bid or bids exceed the allowable construction cost, the A/E shall, upon the request of the Owner, submit within fourteen (14) days of the Owner's request, together with appropriate description and explanation, a list of possible changes or revisions to the drawings and specifications, designed to reduce the cost to the Final Cost Estimate while retaining to the maximum extent possible the scope, quality and intent of the original Project requirements. The A/E shall give careful consideration to and evaluate the probable cost of construction changes and revisions proposed. If then directed by the Owner to make certain changes and revisions for the purpose of reducing the cost to within the allowable construction cost, the A/E and it's consultants shall make such changes and revisions without additional cost to the Owner. Written approval for design intent of the documents submitted under Phase C, given prior to receipt of bids for the work, shall not relieve the A/E and it's consultants of their obligation to make such changes without additional compensation under the above conditions. Evaluations of the Owner's Project budget, preliminary Cost Estimates or detailed Cost Estimates prepared by the A/E represent the A/E's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the A/E nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or regulatory conditions. Accordingly, the A/E cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any Cost Estimate or evaluation prepared or agreed to by the A/E. Providing the changes and revisions shall constitute the A/E's sole responsibility and Owner's sole remedy to the adequacy of the preliminary or Final Cost Estimate and shall fulfill the A/E's liability to the Owner in connection with the Final Cost Estimate. After a construction contract has been signed by the Owner and the Contractor and an Award of Contract Form DOA-39 has been signed, validating the contract, and upon written request of the Owner, the A/E shall commence Phase D of his services.

For projects Seeking LEED Certification the A/E shall perform the following during Phase C:

- The Architect/Engineer shall provide the final energy model and the resulting number of points for Energy and Atmosphere Credit 1 to the Owner at the completion of construction documents.
- The Architect/Engineer shall insure that the contract documents incorporate information including drawings, details and specifications necessary to meet the LEED requirements for credits being pursued. Include Contractor requirements relating to LEED documentation, process, etc. Include commissioning requirements in the contract documents.
- The Architect/Engineer shall participate in commissioning authority construction document design review process to be conducted prior to mid-construction documents.
- The Architect/Engineer shall prepare and submit the LEED Design Application to the USGBC.

PHASE D - DUTIES, OBLIGATIONS AND RESPONSIBILITIES DURING CONSTRUCTION:

During construction of the Project, and at all times relevant thereto, the A/E shall have and perform the following duties, obligations, and responsibilities:

1. In addition to its duties, obligations and responsibilities set forth in the following paragraphs, the A/E shall have and perform those duties, obligations and responsibilities set forth in the Construction Contract Between Owner and Contractor ("the Construction Contract") that are specifically designated as duties, obligations and responsibilities of the A/E.
2. The A/E shall, as contemplated herein, but not otherwise, act as a representative on behalf of the Owner throughout construction of the Project. Instructions, directions, and other appropriate communications from the Owner to the Contractor shall be given to the Contractor by the A/E.
3. Upon receipt, the A/E shall carefully review and examine the Contractor's Schedule of Values, together with any supporting documentation or data which the Owner or the A/E may require from the Contractor. The purpose of such review and examination shall be to exercise that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances to prevent an unbalanced Schedule of Values which allocates greater value to certain elements of the Work than is indicated by such supporting documentation or data, or than is reasonable under the circumstances. If the Schedule of Values is not found to be appropriate, or if the supporting documentation or data is deemed to be inadequate, and unless the Owner directs the A/E to the contrary in writing, the Schedule of Values shall be returned to the Contractor for revision or supporting documentation or data. After making such examination, if the Schedule of Values is found to be appropriate as submitted, or if necessary, as revised, the A/E shall sign the Schedule of Values thereby indicating to the best of the A/E's knowledge, information and belief, that the Schedule of Values constitutes a reasonable, balanced basis for payment of the Contract Price to the Contractor. The A/E shall not sign such Schedule of Values

in the absence of such belief unless directed to do so, in writing, by the Owner;

1. The A/E shall become generally familiar with the progress and quality of the work of the Contractor, and shall visit the site at intervals appropriate to the stage of construction, including, at a minimum, site visits no less frequently than two (2) per month. The purpose of such site visits shall be to determine in general the quality and quantity of the work in comparison with the requirements of the Construction Contract. In making such on site observations, the A/E shall endeavor to protect the Owner from continuing deficient or defective work, from continuing unexcused delays in the schedule and from overpayment to the Contractor. Following each site visit, the A/E shall submit a written report of such site visit, together with any appropriate comments or recommendations, to the Owner. However, the A/E shall not be required to make exhaustive or continuous on site inspections to check the quality or quantity of the work. The A/E shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Project, since these are solely the Contractor's responsibility under the Construction Contract. The A/E shall not be responsible of the Contractor's Schedule or failure to carry out the work in accordance with the drawings, specifications or Contract Documents. The A/E shall not have control over or charge of acts or omissions of the Construction Subcontractors, or their agents or employees, or of any other person performing portions of the work.
5. The A/E shall initially review and certify periodic and final payments owed to the Contractor under the Construction Contract predicated upon observations of the work as required in Paragraph 4 above and evaluations of the Contractor's rate of progress in light of the remaining Contract Time and shall issue to the Owner Certifications of Payment in such amounts. By issuing a Certification of Payment to the Owner, the A/E informs the Owner that the A/E has made the observation of the work required by Paragraph 4 above, and that the work for which payment is approved has, to the best of the A/E's knowledge, information and belief, reached the quantities or percentages of completion shown, or both, that the quality of the Contractor's work is in accordance with the requirements of the Construction Contract, and that under the terms and conditions of this paragraph and the Construction Contract, the Owner is obligated to make payment to the Contractor of the amount certified. The foregoing representations are subject to an evaluation of the work for conformance with the Construction Contract upon substantial completion, to results of subsequent tests and instructions, to minor deviations from the Construction Contract correctable prior to completion and to specific qualifications expressed by the A/E. The responsibilities of the A/E herein described along with the issuance of a Certificate of Payment shall not be a representation that the A/E has (1) made exhaustive or continuous on site inspections to check the quality or quantity of work, (2) reviewed construction means, methods,

techniques, sequences or procedures, (3) reviewed copies of the requisitions from Subcontractors and Material Suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

6. The A/E shall promptly provide appropriate interpretations on written request or as necessary in the judgment of the A/E for the proper execution of the work.
7. The A/E shall have the authority to reject in writing any work of the Contractor which is not in compliance with the Construction Contract unless directed by the Owner, in writing, not to do so. However, neither this authority nor the authority granted in Paragraph 8 below nor a decision made in good faith to either exercise or not exercise such authority shall give rise to a duty or responsibility of the A/E to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work.
8. The A/E shall have authority to require inspection or reinspection and testing or retesting of the work in accordance with the provisions of the Construction Contract whenever appropriate.
9. The A/E shall receive and approve, or otherwise respond to, the Contractor's shop drawings and other submittals, but only for the limited purposes of checking for conformance with information given and the design concept expressed in the Contract Document. Review of such submittals shall be conducted to allow sufficient time in the A/E's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions or quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Construction contract. The A/E's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the A/E, of construction means, methods, techniques, sequences or procedures. The A/E's approval of a specification shall not indicate approval of an assembly of which the item is a component. The A/E shall not be responsible for any deviations from the Contract Documents not brought to the attention of the A/E in writing. When professional certification of performance characteristics of materials, systems or equipment is required by the Construction Contract, the A/E shall be entitled to rely upon such certification to establish that the materials, systems, or equipment will meet the performance criteria required by the Construction Contract.
10. Based upon observations of the Project, the A/E shall certify in writing to the Owner the fact that, and the date upon which, the Contractor has achieved Substantial Completion of the Project and the date upon which the Contractor has achieved Final Completion of the Project.
11. The A/E shall transmit to the Owner all manuals, operating instructions, record drawings,

warranties, guarantees and other documents and things required by the Construction Contract and submitted by the Contractor.

12. The A/E shall testify, at the request of the Owner, in any judicial proceeding concerning the design and construction of the Project when requested in writing by the Owner, and the A/E shall make available to the Owner any personnel or consultants employed or retained by the A/E for the purpose of reviewing, studying, analyzing or investigating any claims, contentions, allegations, or legal actions relating to, or arising out of, the design or construction of the Project. The A/E's fee for such service shall be negotiated by the parties.
13. The A/E shall receive and promptly examine and advise the Owner concerning requests for Change Orders from the Contractor. Upon request by the Owner, the A/E shall draft Change Orders, whether initiated by the Owner, or by the Contractor and approved by the Owner, in accordance with the Construction Contract.
14. The A/E shall, without additional compensation, promptly correct any errors, omissions, deficiencies, or conflicts in the work product caused by the negligent acts, errors or omissions of the A/E or its consultants, or both.
15. When authorized by the Owner, a Resident Representative selected by the A/E and acceptable to both the Owner and the consultant and approved in writing by the Owner shall be employed by the A/E at a salary satisfactory to the A/E and the Owner, for continuous on site inspection of the Project. In event of such authorization, the Owner shall direct the A/E as to when the services of the Resident Representative shall commence and when they shall terminate. The duties, responsibilities and limitation of authority of the Resident Representative shall be the subject of a separate Scope of Services to be agreed upon by the Owner and the A/E.
16. The A/E shall, upon the completion of the work, make final corrections to the drawings that incorporate all changes and revisions as furnished to the A/E by the Contractor made during the course of the Project so as to provide "record drawings" for the Project, and shall furnish such drawings to the Owner within sixty (60) days of substantial completion. This set of record documents will show the reported location of the work and significant changes made during the construction process. Because these record documents are based on unverified information provided by other parties which will be assumed reliable, the A/E cannot and does not warrant their accuracy.
17. Within one (1) month after final payment to the contractor, the A/E shall provide the Owner with a final written report. This report shall include but is not limited to the following: evaluation of the contractor's work, key personnel and contract administration; evaluation of Project Change Orders; evaluation of the Project schedule; suggestions that would have improved the Project.

18. For projects Seeking LEED Certification the A/E shall perform the following during Phase D:

- The Architect/Engineer shall respond to the USGBC Design Review within 25 Business days of receipt of review comments.
- The Architect/Engineer shall initiate Design Application Appeal as/if necessary. Owner will pay any appeal fees that may be required.
- The Architect Engineer shall provide a written (specifications) and verbal summary of the LEED process and documentation affecting the contract at the pre-bid conference, for the purpose of educating potential bidders on LEED requirements for the project.
- At or near the time of the pre-construction conference, The Architect/Engineer shall apprise the contractor of information required from the Contractor relevant to LEED submittals.

19. As extended Phase D services during the warranty period , the A/E shall: Conduct a one year warranty inspection of the Project to determine if remedial work is required to satisfy project guarantees and warranties.

20. As Extended Phase D Services during the warranty period for projects seeking LEED certification the A/E shall:

- The A/E in association with the Contractor shall prepare and submit the LEED Construction Application to the USGBC.
- The A/E shall respond to the USGBC Construction Review within 25 business days of receipt of review comments.
- The A/E shall initiate Construction Application Appeal as/if necessary. Owner will pay any appeal fees that may be required
- A/E shall assist the commissioning authority as necessary.

ARTICLE III FEES AND OTHER PAYMENTS

The Owner shall pay to the A/E for the indicated services the following Fees and other payments.

As full and complete compensation for all of A/E's services as provided herein, the Owner shall pay to the A/E the sum of * see below, which sum shall constitute the Total Lump Sum Price (Price) and shall include the lump sum fee described below for Phase A. The Price shall be equitably adjusted in the event the Owner approves an increase or decrease in the scope of project. ***To be determined at the conclusion of Phase A.**

A. FEES:

1. Upon completion of Phase A of the A/E's services, (completion defined as Owner's written authority to proceed to next phase), the Owner shall pay to the A/E a lump sum Fee of «PhaseAFee».
2. Upon completion of Phase B of the A/E's services, the Owner shall pay to the A/E, 40% of the Price, less the previous lump sum payment made for Phase A.
3. On projects with an accepted Phase B construction cost estimate in excess of \$1,000,000, when the Owner determines that the A/E has performed one-half of the work required under Phase C, the Owner shall pay to the A/E a sum equal to 60% of the Price, less all amounts previously paid for Phase A and B. The 60% payment option does not apply where the Phase B construction cost estimate is less than \$1,000,000.
4. Upon completion and acknowledgement of the construction documents and final estimate, and all other services required under Phase C of the A/E's services, notwithstanding the fact that bids have not yet been taken on the Project, the Owner shall pay to the A/E a sum equal to 75% of the Price, less all amounts previously paid under Article III, A., Paragraphs 1, 2 and 3.
5. As the A/E renders services under Phase D and the warranty period the Owner shall pay to the A/E 25% of his total Price for such services through periodic payments. As the A/E renders services under Phase D and the warranty period the Owner shall pay to the A/E 25% of his total Price for such services through periodic payments.

For projects requiring LEED certification 20% of the total Price shall be paid during Phase D and 5% shall be paid during the warranty period. Each periodic payment to the A/E for services under Phase D shall be that part of the 20% of the total Price applied to the value of the completed construction as determined by the Owner in approved certificates of payment to the Contractor. Payment under Phase D shall be made to the A/E at 25%, 50%, 75%, and 100% completion of construction, all totaling 20% of the lump sum Price. However, the Owner may agree to a more frequent schedule of payments. Payment of the

remaining 5% of the total price shall be made in two equal payments, one at 50% of the warranty period and one at the conclusion of the warranty period.

For projects not requiring LEED certification each periodic payment to the A/E for services under Phase D shall be that part of the 25% of the total Price applied to the value of the completed construction as determined by the Owner in approved certificates of payment to the Contractor. Payment under Phase D shall be made to the A/E at 25%, 50%, 75%, and 100% completion of construction, all totaling 25% of the lump sum Price. However, the Owner may agree to a more frequent schedule of payments.

6. In the event the Owner elects to divide the total project into two or more separate projects, each requiring separate plans, specifications, inspection, and administration of construction, the A/E shall be entitled to additional, reasonable compensation.

B. OTHER PAYMENTS:

1. For Extra Work in Programming:

If the A/E is required to provide assistance to the Owner and Agency during Phase A for programming or for reconciling Program requirements with allowable construction cost, and if this work is authorized in writing by the Owner, the Owner shall reimburse the A/E for any such extra work as described under Paragraph 4 herein.

2. For Extra Work Due to Changes:

If the A/E and his sub-consultants during Phase B or C of their services, or for the preparation of "Record Drawings" during Phase D, are required by reason of changes ordered by the Owner, to do extra work by changes to drawings, specifications or estimates previously approved by the Owner, and if such work is authorized in writing by the Owner, the Owner shall reimburse the A/E for any such extra work as described under Paragraph 4 herein. However, if such work is required by failure of the A/E or any of his sub-consultants to properly and correctly select, indicate, delineate or describe materials or methods of construction or finishes in accordance with applicable codes, regulations, or normal architectural or engineering practices, in such event the Owner is under no obligation to pay the A/E for the extra cost so caused, even though the documents requiring correction or changes bear the approval of design intent of the Owner.

3. *For Extra Work Due to Extended Construction Time:*

In the event Phase D is extended beyond the required date of Final Completion through no fault of the A/E, and if the A/E is required by the Owner in writing to provide inspection and construction administration services during such extended period, then the Owner shall reimburse the A/E as described in Paragraph 4 herein.

4. *Reimbursements to the A/E:*

Extra payments to the A/E, as required under Paragraphs 1, 2, and 3 above, shall be on a negotiated basis between the Owner and A/E, and if Owner and A/E cannot negotiate the extra payments, the A/E shall be entitled to additional, reasonable compensation for the extra work.

5. *For the Services of a Resident Representative:*

If the A/E under Phase D of his services is required to employ a Resident Representative for continuous on-site observation of the Project, the cost of such service shall be negotiated at an amount satisfactory to the Owner and A/E, and if Owner and A/E cannot negotiate the amount, the A/E shall be entitled to additional, reasonable compensation for the employment of a Resident Representative. The Owner shall reimburse the A/E in the amount of the Resident Representative's approved salary, plus an amount not to exceed 25% of the said gross salary to cover the Resident Representative's employee benefit package with the A/E. Individual items to be included as part of the employee benefit package shall exclude profit, overhead and office/firm administrative costs. The A/E shall provide supporting documentation indicating the firm's fringe benefit contribution percentage that when applied to the approved salary amount, results in a total A/E fringe benefit contribution. A sum equal to five percent of the Resident Representative's total approved salary plus the agreed value of the fringe benefit contribution, shall be paid to the A/E for personnel administration and management of the Resident Representative. Any Resident Representative's travel allowance shall be in accordance with existing State travel regulations. The A/E shall be reimbursed for actual travel expense based on the travel allowance agreement. Any deviation from State travel regulations shall be fully documented and approved by the Director, Division of Engineering and Contract Administration. These approved expenses shall be in addition to all fees and other payments, but no further sum shall be paid by the Owner for the services of the Resident Representative. Any cost for the Resident Representative's services not included in the above reimbursement and any salary or travel allowance in excess of the sum approved by the Owner shall be paid by the A/E without reimbursement.

6. *For The Services of Special Consultants:*

If, because of the highly specialized nature of the Project, the A/E is required by the Owner to hire a Special Consultant, and the Owner has approved in writing the selection of the consultant, the total amount of its fees and the scope of its work, then, and in that event, the Owner shall reimburse the A/E the amount of the Special Consultant's negotiated lump sum fee when its work on the Project is completed; or if the Owner judges it proper to make periodic partial payments to the A/E for the Special Consultant's services, the Owner shall make such periodical payments in proportion to the services rendered until the aggregate of

all such payments equals the approved total fee of the Special Consultant at the conclusion of his services. Food Service Consultants, where required and authorized in writing by the Owner, shall be considered a Special Consultant and shall be retained after the Owner and the A/E have agreed upon a lump sum fee for such services. Food Service Consultation shall include kitchen equipment and food service equipment only, not built-in shelving or other built-in items.

7. *For Additional Photographic Reproductions of Renderings:*

If the A/E is required by the Owner to furnish additional photographic reproductions of the architectural rendering for the Project, or reproductions other than those specified as a required part of his services under Phase C, the Owner shall reimburse the A/E the actual cost of such additional or different reproductions times a multiple of 1.1.

8. *For the Services of Landscape and Interior Consultants:*

If the A/E is required by the Owner to employ a landscape or interior consultant and the Owner has approved in writing the selection of the consultant, the total amount of additional fees and scope of the work shall be as follows:

A. *Landscape Consultant:*

The scope of the services of the Landscape Consultant is to consist of plans and specifications and inspection for planting of trees and shrubs only. Sodding, seeding, retaining walls, drives, walks, and related services, shall be included in architectural specifications and plans. The Landscape Consultant shall be notified in advance as to project funds available for its work. The A/E shall be paid a reasonable, additional lump sum landscaping fee for this work, 80% of which shall be paid to the Landscaping Consultant.

B. *Interior Consultant:*

The scope of the Interior Consultant's services is to consist of plans and specifications and inspection of movable equipment and furniture required for the Project. The A/E shall be responsible for the preparation of plans and specifications and for the inspection of carpets, draperies, built-in furniture, library shelving and storage shelving within the scope of his services under Phases A, B, C, and D. However, the A/E may consult with the Interior Consultant as to colors. The A/E shall be paid a reasonable, additional lump sum interior consultant fee for his work, 80% of which shall be paid to the interior consultant.

ARCHITECT-ENGINEER'S CONTRACT

SECTION II

ARTICLE I

CONSULTING ENGINEERS AND SPECIAL CONSULTANTS

A. When Required:

1. The A/E shall employ Mechanical and Electrical Engineers for the design and professional supervision of all mechanical work included in the project, such as plumbing, heating, ventilation, and air conditioning, control system for mechanical systems, and all electrical work included in the Project, including telephone, program clocks, signal, and fire alarm systems, but not elevators.
2. On projects which should have structural frameworks, pilings, or other unusual foundations, the A/E shall employ a Structural Engineer for the design and direct supervision of the professional services associated with this portion of the work. The extent of the Structural Engineer's work shall include all pilings, reinforced concrete, including interior concrete slabs on grade, plain structural concrete, reinforcing steel, structural steel, including steel joists, and structural and laminated timbers, hoists and cranes, and all special items designed by the Structural Engineer. The cost of architectural concrete over and above the cost of structural concrete, general excavation and backfill, and elevators shall not be considered in the Structural Engineer's portion of the work.
3. The A/E shall employ a special consultant other than the Consulting Engineers mentioned in paragraphs 1 and 2, above only when specifically directed by the Owner to do so.
4. The A/E shall employ Landscape and Food Service Consultants where required by the Owner and the Owner has approved in writing the selection of the consultant.

B. Qualifications:

1. The Consulting Mechanical and Electrical Engineer employed for this project shall be licensed Mechanical and Electrical Engineers against which the Owner has interposed no reasonable objection, to provide services on this project within the scope of their professional registration.
2. The Consulting Structural Engineer, if any, employed for this Project, shall be a licensed Structural Engineer, competent in the field of structural design and regularly engaged in practice of structural design, against which the Owner has interposed no reasonable

objection, to provide services on this Project within the scope of his professional registration.

3. Special Consultants, if any, shall be skilled in their special field and shall meet such requirements as the Owner shall establish for them.
- C. No consulting engineer or special consultant shall be employed for this Project by the A/E without prior written approval of the consultant and the special consultant by the Owner.
- D. Consulting Engineers Named:
1. The A/E shall employ as Mechanical and Electrical Engineers for the design and supervision of all mechanical and electrical work as hereinbefore defined, the firm(s) of **«MechanicalElectricalSub»**
 2. The A/E shall employ as Structural Engineer for the design and supervision of all structural work as hereinbefore defined, the firm(s) of **«StructuralSub»**.
 3. Other Team Consultants are as follows:
«OtherSub1»
«OtherSub2»
«OtherSub3»
«OtherSub4»
- E. A/E's Payment to Consulting Engineers:
1. The A/E agrees to pay to each of the Consulting Engineers a lump sum fee as negotiated between the A/E and the Consulting Engineer which fee is a part of the A/E's total lump sum fee, and which sum is based on 80% of the fee for work for which the Consulting Engineer is responsible, unless the A/E and Consulting Engineer otherwise agree.
 1. Upon completion of Phase "A" Services, the A/E shall pay to the Consulting Engineers at a rate of cost plus 100%, but not to exceed 20% of the Consulting Engineers lump sum fee, or the Phase "A" fee negotiated with the Consulting Engineer, whichever is less.
 3. Upon completion of Phase "B" Services, the A/E shall pay to the Consulting Engineers a sum sufficient to make the total amount equal to 40% of the Consulting Engineers' lump sum fee including the fee paid under Phase "A" Services or the total of Phase "A" and Phase "B" Services negotiated with the Consulting Engineers, whichever is less.
 4. For Phase "C" and Phase "D" Services, the A/E shall pay to the consulting Engineers the amounts negotiated with the Consulting Engineers. Fee payments shall be made to the Consulting Engineers within fifteen days after the A/E's payment from the Owner for the respective portion and phases of fees as described in Section I, Article III, Paragraph A.
 5. The Consulting Engineers shall be paid for any authorized extra work due to changes as

set out in Article III, Paragraphs B 1-2-3, "Other Payments."

GENERAL PROVISIONS

SECTION III

A. ***INDEMNITY:***

The A/E shall indemnify and hold harmless the Owner from and against all liability, claims, loss, costs and expense, including defense costs, arising out of, or resulting from, the negligent acts, errors, or omissions of the A/E and its subconsultants under this Contract. In the event the Owner is alleged to be liable on account of negligent acts or omissions, or both, of the A/E, the A/E shall defend such allegations and the A/E shall bear all costs, fees and expenses of such defense, including but not limited to, all attorneys' fees and expenses, court costs, and expert witness fees and expenses.

B. ***PROJECT RECORDS:***

All records relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the A/E or the A/E's consultants, shall be made available to the Owner for inspection and copying upon written request of the Owner. Additionally, said records shall be made available, upon request by the Owner, to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design, and its construction. Submission or distribution of documents pursuant to this provision, to meet official regulatory requirements or for similar purposes in connection with the Project shall not be construed as publication in derogation of the A/E's reserved rights.

Said records expressly include those documents which reflects the records of expenses and reimbursable items incurred by the A/E in its performance under this Contract. The A/E shall maintain and protect these records for no less than seven (7) years after final completion of the Project, or for any longer period of time as may be required by applicable law or good architectural practice.

C. ***NO THIRD PARTY BENEFICIARIES:***

Nothing contained herein shall create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.

D. ***SUCCESSORS AND ASSIGNS:***

Neither the Owner nor the A/E shall assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the other

party.

Subject to the provision of the immediately preceding sentence, each party hereto binds itself, its successors, assigns and legal representatives to the other and to the successors, assigns and legal representatives of such other party.

E. APPLICABLE LAW:

The parties agree that any suit, action or proceeding with respect to the Contract may only be brought in or entered by the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky, or the United States District Court for the Eastern District of Kentucky, Frankfort Division, and the parties hereby submit to the non-exclusive jurisdiction of such courts for the purpose of any such suit, action, proceeding or judgement and waive any other preferential jurisdiction by reason of domicile or location. The parties hereby irrevocably waive any objection that they may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or related to this Contract brought in the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky, or the United States District Court for the Eastern District of Kentucky, Frankfort Division, and also hereby irrevocably waive any claim that any such suit, action or proceeding brought in any one of the above-described courts has been brought in an inconvenient forum.

In any such suit, action or proceeding, the parties agree that the laws of the Commonwealth of Kentucky shall apply.

The parties agree that there shall be a one year statute of limitations from the date of the Certificate of Final Completion of the Project or termination of this Agreement as provided herein, whichever shall first occur.

F. TERMINATION:

The Owner may terminate this Contract pursuant to 200 KAR 5:312.

G. OWNERSHIP OF DOCUMENTS:

Plans and specifications are the sole property of the Owner, whether or not the work for which they are made be executed. Use of the plans and specifications shall be in accordance with KRS Chapter 323 and KRS Chapter 322, and for any use not in connection with this Contract, shall be only with the written authorization of the A/E.

H. MINIMUM INSURANCE REQUIREMENTS

The A/E shall maintain the following or equivalent insurance policies at no less than the limits shown below and cause its subconsultants to maintain similar insurance with limits acceptable to the Commonwealth:

<i>Coverage</i>	<i>Limits</i>
Professional Liability	\$1 million per occurrence, \$2 million aggregate
General Liability (Insurance Services Office Form CG 00 01)	\$1 million per occurrence, \$2 million aggregate
Worker's Compensation	Statutory
Employer's liability	\$ 500,000.00

The policies above shall contain the following conditions:

1. The Commonwealth shall be named as an additional insured in the A/E's general liability policy.
2. The A/E's general liability shall be primary to any insurance or self-insurance retained by the Commonwealth.
3. The Commonwealth shall be provided at least 30 days notice in the event any of the required policies are canceled or non-renewed.
4. Professional Liability (Errors and Omission) policies shall be maintained for a minimum of three years beyond the completion date of the project, to the extent commercially available. If not commercially available, the A/E shall notify the Owner and obtain similar insurance that is commercially available and acceptable to the Commonwealth.
5. A copy of the certificate of insurance shall be provided by the A/E to the Owner upon execution of this Contract.

Said coverage shall be written by insurers acceptable to the Owner and shall be in a form acceptable to the Owner. Additional insurance coverage and amounts required, if any, are stated below:

I. RECORD DRAWINGS:

It is understood and agreed and made a part of this contract that the A/E shall, under Phase D of his services, upon completion of the work, make final corrections on the Drawings, incorporating all changes and revisions made during the progress of the work, so as to provide "Record Drawings" of the Project, subject to Article II, Phase D, paragraph 16. Final payment to the A/E shall not be made until the Owner has received the "record drawings".

J. MATERIALS AND EQUIPMENT:

The A/E shall only prepare specifications that clearly establish the type and quality of

materials/equipment, or application of each item in the Project, without writing a closed specification, and shall prepare them in a manner which encourages competitive bidding.

K. CERTIFICATION OF CONTRACT AND FUNDS:

The Contract is not effective and binding against the Owner until its applicable encumbrance document, "Purchase Contract," (Form DOA-39) has been approved and issued by the Finance and Administration Cabinet and unless and until three copies of the Contract are filed with the Legislative Research Commission, with each such copy being accompanied by documentation of the need for such service and by documentation that State personnel are not available to perform such service. The A/E acknowledges and understands that no payment may be made under this Contract before completion of the review procedure provided for by KRS 45A.705 unless and until alternate actions occur as set out in KRS 45A.695 (7).

L. EXPEDITION OF WORK/SCHEDULE:

It is agreed that the A/E shall be in position to commence work on the services involved, within one (1) day of receipt of written authorization, without delay or interruption. Should the A/E fail or refuse to commence said services as directed by the Owner, the Owner shall thereupon have the right to terminate this contract for cause, subject to Paragraph F. Nothing in this Section and nothing set forth in this Contract shall be construed to relieve the A/E of liability for damages sustained by the Owner by virtue of any breach of this Contract by the A/E.

After direction to proceed by the Owner, within ten (10) working days the A/E shall provide the Owner with a proposed project schedule. Such schedule, if approved by the Owner, shall constitute the schedule for performance of its duties hereunder by the A/E.

M. STATE EMPLOYEE:

It is agreed by and between the parties hereto that the A/E shall observe the rule of State Government and shall not solicit or employ State Employees in conjunction with his work under the Contract without the approval of the head of any department from which employees are sought to be obtained, nor without the approval of the Owner.

N. CONFLICT-OF-INTEREST LAWS AND PRINCIPALS:

By his signature, the A/E certifies that it is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract shall not be violating either any conflict of interest statutes (KRS 45A.330-45A.340-45A.990, 164.390), or KRS 11A.040 of the Executive Branch Code of Ethics, relating to the employment of former public servants.

O. OWNER'S REPRESENTATIVE:

For the purpose of the Contract, the Commissioner, Department for Facilities Management, Finance and Administration Cabinet, is hereby designated as the representative of the Owner with full authority to act in all matters pertaining to this Contract for and in the name of the Owner, and may delegate such authority to such other representatives of the Department for Facilities Management as he deems in the best interest of the Commonwealth for the proper administration of the project. The Owner and the A/E hereby agree to the full performance of the covenants herein.

P. **SUCCESSORS AND ASSIGNS:**

Owner and A/E each binds himself, his partners, successors, legal representatives and assigns to the other party, to this Contract and to the partners, successors, legal representatives and assign of such party in respect to all covenants of the Contract. Upon written notification to the Secretary of the Finance and Administration Cabinet, the A/E may assign a portion of his financial interest to a recognized financial institution for underwriting operations covered by this Contract.

PERSONNEL

The A/E shall assign only qualified personnel to perform any service concerning the Project. At the time of execution of this Contract, the parties anticipate that the following named individuals shall perform those functions indicated:

Name	Function
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the Architect, they shall perform the functions on this project indicated next to their names.

ENTIRE AGREEMENT

The Contract constitutes the entire an exclusive agreement between the parties with reference to the Project and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements.

IN WITNESS THEREOF they have executed this Agreement the day and year first above written.

«VendorName»

(Name of Architect, Engineer or Firm)

BY: _____

Title: _____

(Insert position in firm)

Date _____

COMMONWEALTH OF KENTUCKY

BY: _____

James F Abbott, Commissioner
Department for Facilities & Support Services

_____ Date

EXAMINED FOR FORM AND LEGALITY

BY: _____

Attorney
Finance and Administration Cabinet

_____ Date